

COPY

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May 21, 1997

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Christopher J. Gagin, Esq.  
King, Hargrave, Scurti & Jack  
P. O. Box 249  
200 Sinclair Building  
Steubenville, OH 43952

Re: The Critter Company, Inc. vs. Canton Drop Forge, Inc.  
Case No. 1996CV00615 (Stark County Court of Common Pleas)

Dear Mr. Gagin:

You will find enclosed a completely signed duplicate original of the Settlement Agreement and Mutual Release agreed upon for the above case.

We have submitted the signed Stipulation of Dismissal to Judge Haas for his review, signature and filing. We presume that the Clerk of Courts will forward your office a file-stamped copy of the Stipulation of Dismissal.

We now consider the case to be at an end and will close our file on it.

Very truly yours,

Matthew Yackshaw

MY:bam

Encl.

bcc w/o encl.: Fred H. Zollinger, Jr., Esq.  
Mr. Jerome P. Bressanelli, President  
Canton Drop Forge, Inc.

C:\WP\MY\CDF-GAGI.LTR[05/21/97:MY:bam]

CDF004205

JUL-16-1996 17:24 FROM KINSEY ALLEBAUGH KING

TO

1330455263360

P. 02

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## King Hargrave Scurti &amp; Jack

Attorneys at Law

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Christopher J. Gish

July 16, 1996

Mr. Matthew Yackshaw, Esq.  
Day, Ketterer, Raley, Wright & Rybolt, Ltd.  
P.O. Box 24213  
Canton, Ohio 44701-4213

RE: The Critter Company, Inc. v. Canton Drop Forge, Inc.  
Case No. 1996CV00615 (Stark County Court of Common Pleas)

Dear Mr. Yackshaw:

In an effort to provide a mutually satisfactory settlement to the above captioned litigation, The Critter Company, Inc. (hereinafter "TCC") makes the following offer to Canton Drop Forge, Inc. (hereinafter "CDF").

1) TCC will dismiss all claims <sup>9/20/95 Coons \$30,000</sup> currently pending against CDF, with prejudice, for the sum of Thirty Thousand Dollars and 00/100 (\$30,000.00). Said sum <sup>\$30,000 7/26/95</sup> represents previous invoices for seeding Lagoon #1 with microorganisms and nutrients; the 12% of the contract price due The Critter Company, Inc. for reducing TPH levels in Lagoon #1 by at least 25%, as well as costs such as rental equipment fees and finance charges assessed against the Critter Company;

2) The prior contract will be declared void, CDF will dismiss its counterclaim with prejudice and the parties will execute a new agreement. The "new" agreement will provide CDF with a reasonable means of completing the project and controlling costs. To this end, TCC proposes the following basic terms:

a) At CDF's discretion, CDF will engage TCC on an "as needed basis" to provide microorganisms and the necessary nutrients and/or catalysts to remediate Lagoons #1 and #2 at a fixed cost of \$7,500.00 per application, payable on or before the date of the application. CDF should note that TCC has developed more powerful combinations of microorganisms in recent months and estimates

CDF004206

## TCC PROPOSAL

Mr. Matthew Yackshaw, Esq.

July 16, 1996

Page 2 of 2

that three (3) to (6) applications will be necessary to fully reembody Lagoon #1;

b) CDF would be responsible for providing soil aeration. (TCC recommends turning the soil at least once a week. Turning the soil at least once a week will reduce the overall number of applications necessary to reembody the site. Beaver Excavating, located literally across the street from CDF, has the necessary equipment to turn the soil. It should be more cost effective for CDF to hire Beaver directly rather than have TCC sub contract the job);

c) CDF would be responsible for all testing of the site, as well as draining any standing water from the site;

d) CDF would hold the right to cancel the project at any time, and CDF will make all determinations as to the "need" for further TCC applications.

PLEASE NOTE, THE FOLLOWING: TIME IS OF THE ESSENCE. TCC'S MICROBES ARE LIVING ORGANISMS WHICH ARE TEMPERATURE SENSITIVE. AN INOCULATION OF THE BIO-CELL SHOULD BEGIN AS SOON AS POSSIBLE. TCC REQUIRES A ONE (1) WEEK NOTICE TO GROW THE ORGANISMS AND MUCH OF THE SPRING AND SUMMER HAS ALREADY PASSED. THEREFORE, THIS OFFER MUST BE ACCEPTED, IF AT ALL, NO LATER THAN 5:00 P.M. ON AUGUST 2, 1996. THIS DEADLINE IS A BIOLOGICAL NECESSITY IF ANY MEANINGFUL REMEDIATION IS TO TAKE PLACE THIS YEAR.

This proposal is different than the former contract. However, the basic outline above provides both sides with a cost effective, realistic means of completing the project.

TCC remains committed to providing solutions to difficult environmental problems, including CDF's. TCC, however, will take all measures necessary to protect its rights. Therefore, I request that you forward this offer to CDF for their immediate consideration. Please contact me at your earliest convenience should you have any questions regarding this offer.

Very truly yours,

*Christopher J. Gagin*  
Christopher J. Gagin

- 1) QUALITY ASSURANCE OF INOCULATION & NUTRIENTS
- 2) WHAT WILL HAPPEN W/ HYDROPHOBICITY
- 3) NOW PERFORMANCE C, D, E, F
- 4) WHAT LEVEL DOES CDF THINK WE WILL ACHIEVE
- 5) IS SCREENING REQUIRED?

CDF004207

2(b)

30 ton/week  
OF SCRAPPING  
\$32/TON

TCC WANTS

BEAVER 35,820 SPENT

TCC NOW 30,000 UP FRONT  
FIRST PASS  
2000

TCC IF 37,500

~~\$16320~~

2921<sup>cu</sup>YD

\$35.37/cuYD

50% NUC

478692

9000

-10%

WAS 1/2 OF 36%

NOW 1/3 OF 36%

2921 cuYD

~~78  
x 2  
1734~~

100#/cuft

2700 #/cuYD

3943 TON

\$24.94/cuYD

2921 cuYD

TOTAL COS: \$74,820

PAYED BEAVER 35,820

\$39,000

PAY → - 3,000

\$36,000

- 3,600

\$32,400

9/20/95 INVOICE

10% RETAINAGE

x 36%

PERFORMANCE

PAY → \$11,664

\$7,500

PER APPLICATION

x 5

APPLICATIONS (3-6)

FUTURE → \$37,500

TOTAL \$ FUTURE

TOTAL  $\frac{87,944}{3000YD} = \$29.33/cuYD$



2(b)

September 5, 1995

Jerry Coon  
Crittter Co.  
6890 E. Sunrise Dr.  
#120-10  
Tucson, AZ

Dear Jerry:

After visiting the job site at Canton, I would agree that the Brown Bear would definitely be the best tool for this project, but because of the extremely harsh working environment, I am quite concerned about damage to the machine. I am enclosing some photos we took of just a few items that can ruin tires, bend/break the auger, and take out the auger drive bearings and seals. We found numerous rocks and chunks of concrete large enough to do such damage. In addition, there are all kinds of metal stakes, shards, plate stock, I-beams, etc., plus cable that will wrap up on the auger and destroy seals and bearings.

You can expect extraordinary costs of operation due to these hazards, but it is difficult to tell you what to budget, because the extent of damage will be in direct relationship to how well the material is purged of these items before the Bear works there, and how careful the operator is in stopping and removing these items the instant they are turned up by the auger. Even without the extra damage, you will also have accelerated wear to the auger components due to the highly abrasive nature of the material.

We can rent you a Bear for this job for \$12,500 per month f.o.b. Pontiac, IL, and would also need a \$10,000 damage repair deposit to be applied toward the cost of any repairs the machine would need upon its return to our shop, to bring it back to the same condition as when it left, except for normal wear and tear. Additionally, the first month's rent and damage deposit must be received prior to shipment of the machine from our yard, and each subsequent month's rent is due at the start of the rental month. The rental period is from when the machine leaves our yard until it is returned, and upon the return inspection, any repairs needed will be paid for out of the \$10,000 deposit, with any balance being returned, or any additional being billed out. The machine is rented on a net net basis, meaning all operating costs and all repairs of any nature are the responsibility of the lessee.

Sales - Rentals - Parts - Service  
1884N 1600E, P.O. Box 415 - Pontiac, Illinois 61360 - (815) 833-1111

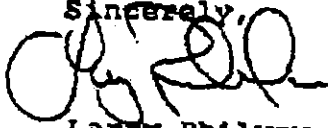
CDF004209

Our normal option to purchase the machine is to allow 100% of the rentals paid in, to apply to the purchase price of \$79,500, if the unit is purchased within the first 30 days of the rental contract, or 90% if purchased within 90 days. Of course, if the purchase option is exercised, the \$10,000 damage repair deposit would also be applied to the selling price.

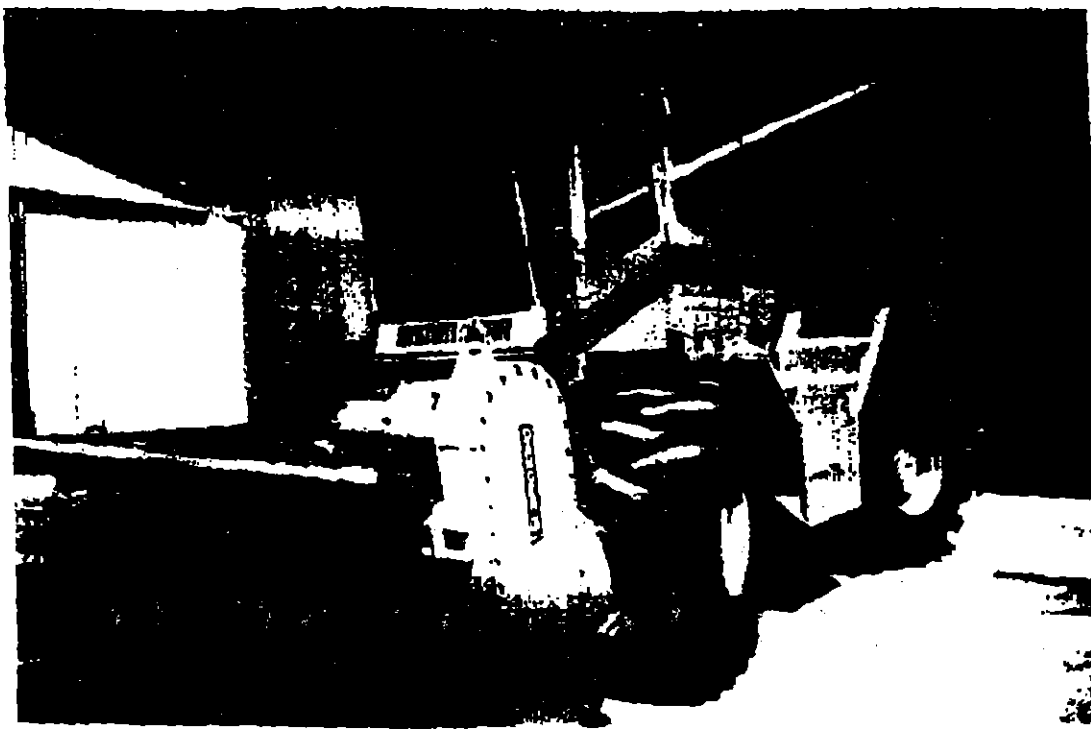
As for giving you some idea of what various costs might be, a set of 28.1-26 L1 tires will run about \$5000, an auger screw rebuild (wear plates, carbide teeth, hard facing, welding, etc.), will run \$2000-3000, auger bearings about \$1000-2000, and auger shaft replacement \$2000-3000. You may or may not have to bear these costs, as mentioned above, but I think I would allow something, especially enough for a set of tires and screw rebuild.

If you need any further information, please don't hesitate to call.

Sincerely,



Larry Philyaw  
MIDWEST AUGER-AERATOR



### **BROWN BEAR I**

STOCK # 1062

**\$79,500**

225 HP Brown Bear I w/10' Auger w/carbide cutting teeth. JD 6468A Diesel Engine. ROPS Cab w/Heater and Air Conditioning. Four Wheel Drive, Four Wheel Steering, with coordinated, crab & front-wheel-only steering modes. 28.1-26 L1 Forestry Tires, 75-80% Tread Remaining.

Machine completely rebuilt approximately 1500 hours ago, including hydraulic pumps & motors, differentials & axles. Recently gone through in shop, all systems checked, tested, & serviced or repaired as needed.

Available August 15, 1995. 30 day 50/50 warranty. Rent-purchase plan available.

RENTAL RATES: \$12,500/MO. 1 MO. MIN.  
10,000/MO. 3 MO. MIN.  
8,500/MO. 6 MO. MIN.



MIDWEST ROGER-RENTOR

1-800-3294

King Hargrave Scurti & Jack  
Attorneys at Law

COPY

Robert P. King  
Robert C. Hargrave  
Adam E. Scurti  
Otto A. Jack, Jr.

2(b)

200 Sinclair Building  
P. O. Box 249  
Steubenville, Ohio 43952

Christopher J. Gaglin

Telephone (614) 282-1900  
Facsimile (614) 282-5397

September 4, 1996

Mr. Matthew Yackshaw, Esq.  
DAY, KETTERER, RALEY, WRIGHT  
& RYBOLT, LTD.  
800 William R. Day Building  
121 Cleveland Avenue, South  
Canton, Ohio 44702

In Re: The Critter Company, Inc. vs.  
Canton Drop Forge, Inc.  
Case No. 1996CV00615  
Stark County Court of Common Pleas

Dear Mr. Yackshaw:

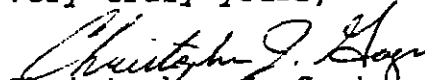
Pursuant to Judge Haas' suggestion, I would like to schedule a time in which to "shoot" a joint video tape of Lagoons #1 and #2, as well as the bio-cell.

With the exceptions of Monday, September 9th and Monday, September 16th, I can make myself available for a shoot from September 9th through 20th. Therefore, I would appreciate scheduling a date within this two (2) week period.

I do not desire a professional videographer. I believe a standard VHS Camcorder will work just fine. I propose that we share the cost of the Camcorder, if any, and that each party bear the cost of any video tape copy they require.

I welcome any suggestions you may have regarding the shoot, and I thank you for your assistance.

Very truly yours,

  
Christopher J. Gaglin

CJG/vjb

CDF004212

Recd 9-5-96



2661

**CHANGE ORDER #1**

**PROJECT**

Canton Drop Forge, Inc.  
4575 Southway St., S.W.  
P.O. Box 6902  
Canton, Ohio 44706

**CHANGE ORDER  
NUMBER 1**

**DATE: 11/7/95**

Contract No. 95-2A

**CONTRACT FOR:** Bio-remediation of oil contaminated soil from Lagoons #1 and #2.

Whereas, Canton Drop Forge, Inc. ("CDF") and The Critter Company, Inc. ("TCC") entered into a certain contract dated June 14, 1995 ("Contract") for the bio-remediation of oil contaminated soil from Lagoons #1 and #2; and

Whereas, certain disputes have arisen between CDF and TCC with reference to said contract with respect to debris, responsibility for aeration, contamination levels, requirement of completion within two years, and the payment schedule; and

Whereas, TCC was unable to furnish a performance bond as originally contemplated by the bid documents and suggested the payment schedule set forth in the contract in lieu of a performance bond as a means of limiting CDF's risk of TCC's non-performance; and

Whereas, the bio-cell as constructed by TCC contained 3,000 cubic yards and not 4,500 cubic yards as originally contemplated by TCC; and

Whereas, the initial progress sampling contained one sample with a TPH concentration more than fifteen percent (15%) above the treatment level; and

Whereas, TCC has heretofore submitted requested change orders styled "CHANGE ORDER NUMBER: BIO-LAG 1-1" and "CHANGE ORDER NUMBER: BIO-LAG 1-2"; and

Whereas, CDF rejected the proposed change orders but is willing to accept a change order with respect to the payment schedule contingent upon all other open issues, to wit - debris, responsibility for aeration, contamination levels, requirement of completion within two years, being resolved simultaneously

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL AGREEMENTS set forth herein, CDF and TCC hereby agree to the following:

1. The recitals set forth above are incorporated herein and accepted by the parties as the basis of this Change Order Number 1.
2. TCC recognizes and accepts its responsibility to provide aeration of the bio-cell as frequently as required in the expert opinion of TCC.
3. TCC accepts the condition of the bio-cell which was constructed under its supervision as set forth in the contract and waives any claim it has or might have with respect to debris in the bio-cell.
4. TCC accepts the contamination levels and waives any claim it has or might have with respect to the level of contamination.

*work paper*

RECEIVED

OCT 23 1996

COURT OF COMMON PLEAS  
COUNTY, OHIO

2(b)

CANTON DROP FORGE

THE CRITTE  
Plaintiff  
vs.  
CANTON DROP FORGE, INC.  
Defendant

\*  
\* Case No. 1996-CV-00615  
\*  
\* Judge Haas  
\*  
\* REQUEST FOR PRODUCTION  
\* OF DOCUMENTS  
\*

\* \* \* \* \*

Pursuant to Rule 34, Ohio Rules of Civil Procedure, Plaintiff,  
The Critter Company, Inc., hereby requests that the Defendant  
produce the following:

1. Any and all records pertaining to the construction of  
Lagoon No. 1 or 2.  
*DRAWING 12-30-42*
2. Any and all records pertaining to the liquid and/or solid  
matter deposited in Lagoon No. 1 or 2.  
*SEE MSDS SHEETS*
3. Any and all records pertaining to Federal, State, or  
Local Health Department and/or Environmental Protection  
Agency citations issued for Lagoon No. 1 or 2.  
*NONE*
4. Any and all minutes of the Canton Drop Forge, Inc. Board  
of Directors regarding Lagoon No. 1 or No. 2 since 1990.

LEAVE BLANK

~~RETURN TO COMPLETION~~

CDF004214

*Recd. 10-18-96*

5. Any and all records from Hammontree and Associates, Ltd. regarding the study and testing of Lagoon No. 1 and 2.

SEE COPIES

6. Any and all records authored by Canton Drop Forge, Inc. employee(s) regarding Lagoon No. 1 and 2.

SEE COPIES

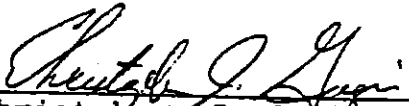
7. Any and all test data records and reports prepared regarding the chemicals composition of Lagoon No. 1 and 2 since 1990.

SEE COPIES

8. Any and all Technical Data provided to The Critter Co.

*FOLLOWING*  
pursuant to Contract 95-2.  
YWC CONTACT INFORMATION FOR MAA, 6/92 HAZMAT WORK  
VERBAL WARNINGS REGARDING BIO MAIL ON THE PIPE  
TPH RESULTS FIRST ROUND

In the event you are unable to provide us with copies, Plaintiff, The Critter Company, Inc., is willing to set a time and place convenient for all concerned for this Plaintiff to inspect and copy said documents.

  
Christopher J. Gagin, Esq.  
Attorney for The Critter  
Company, Inc.  
200 Sinclair Bldg., P.O. Box 249  
Steubenville, OH 43952  
Telephone: 614-282-1900  
Reg. No. 0062820